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## Government Regulation of Railways\*

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It might be expected, especially as I am addressing a body of lawyers, that in dealing with my subject I would consider some of the interesting legal questions which have arisen in connection with the public regulation of railways, but the greater importance of the economic and financial issues involved have induced me to discuss them rather than the more purely legal aspects of the question. If, in railway regulation, our aim is to subserve and advance the public welfare, we are aided but little by a too exclusive reliance upon mere legal learning. Our true enlightenment must come from a study of the economic and financial conditions involved. We can thus more clearly discern the public interests affected and more readily understand that these interests are not really antagonistic to those of the railways. On the contrary, these interests are interdependent, and an injury to one works to the disadvantage of the other. In adopting this line of discussion, I assume that the public interest is of first importance and my purpose is to consider how that interest can best be promoted. I am not here to make a special plea for railway interests, but shall attempt, from an independent and impartial standpoint, to arrive at the principles which should govern the proper exercise of this regulative function. Naturally, with the lawyer's habit, I shall cite authorities to sustain my views—not by any means all the authorities which might be cited, for I shall ignore all who have been identified with railway management or service, however able or experienced they may be, and will content myself with citing only those whose study of the subject from an independent standpoint makes their

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\*An address delivered at the Fourth Annual Meeting of the California Bar Association, November 20, 1913.

conclusions worthy of our serious consideration, and whose record and position in public life lend no critic the opportunity of saying that they are biased in favor of railway interests.

One of the leading members of the Interstate Commerce Commission in point of ability and experience—Hon. Charles A. Prouty—recently said in his address before the National Association of Railway Commissioners that:

“The United States is trying an experiment which never has been successfully worked out yet in the history of the world. It is trying to build, develop and operate its railroads by private capital under rates and regulations fixed not by the owners of that capital, but by the public.”

This authoritative statement challenges our attention. From it we apprehend that the scheme of public regulation of railways in this country is on trial, and we realize the novelty of this experiment and appreciate its tremendous importance, not only to the owners of the billions of private capital involved, but to the public which is vitally interested in these modern highways of transportation. How to balance and harmonize these enormous interests might well perplex the ablest minds. The difficulties of the problem which must be solved no doubt question the wisdom of this experiment, but it would be idle to stop now to discuss whether or not the present scheme of regulation should have been adopted. It will not be abandoned because of difficulties which may arise—it must proceed to its conclusion of success or failure.

But it is profitable, for a moment, to recall the evils which arose in the administration of railways before their public regulation was attempted.

No principle is more vital in railway administration than that there shall be no unjust discrimination between shippers as to service rendered or the rates charged therefor. Unless all shippers pay the same rates for the same service, it would be possible for the favored shipper to cripple or destroy his business rival. There could be no more insidious or vicious practice than to favor one shipper or class of shippers at the expense of others. Such a disturbing force would prevent any sound business development and would be corruptive and destructive in its tendencies. Yet these vicious discriminations were frequent before they were abolished by the force of

government regulation. Before such regulation, not only was the commercial business of the country prejudicially affected by the giving of rebates or secret rates, but such practice no doubt tended to impair the security of railway investments. At least we know that railroad bankruptcies and receiverships were more frequent in the days of rate-cutting than they are now, and while other causes may have contributed to such bankruptcies, yet it is certain that the cut-throat competition between railroads by means of rebates was in some measure responsible for the uncertain conditions of railroad finance. These conditions were intolerable to railroad management, and in justice to railroad managers it must be said that they were the victims of the business practices of the time. The traffic manager could not secure business for his road unless he met the rates given secretly by his competitor. However much he might desire to maintain his published rates and deal fairly with all his patrons, he was forced, in competition with other carriers, to the giving of secret rates. Such practices could not be stopped except by government regulation, for one carrier could set the pace which all its competitors must follow. Undoubtedly, the removal of this one evil of secret rates and rebates fully justified government regulation, and I think no railroad manager would agree to dispense with government regulation at the cost of returning to the old conditions. No one familiar with the history of this subject can doubt that the provisions of the Interstate Commerce Law, enforcing strict compliance with the tariffs filed, have been of great benefit to the railroads, and I think we should not doubt the sincerity of the leading railroad officials when they state that they accept government regulation and are, in good faith, aiding in the enforcement of the law.

Not only in the enforcement of the tariff rates, but in other important particulars, is the law helpful to railroad interests. For example, in the making of tariffs, especially before government regulation, the carriers were often induced—I might say compelled—to publish rates which unjustly discriminated as between persons or places. Shippers offering large tonnage were frequently able, as the consideration for their patronage, to secure more favorable rates than were given to smaller shippers, and important and influential business centers often, for similar reasons, were able to secure advantages over smaller

communities which should not have been given. The action of a commission in removing such discriminations would be accepted by the parties interested, whereas, should the railways alone attempt to do this, they would provoke hostility upon the part of those who might have the power of injuring them. In other words, there are many questions which must arise between the railways and their patrons which should be determined by some impartial arbiter, and in all such cases it is for the best interest of the railways that a tribunal should be provided to determine these questions. I have said this much to show that the railways have good reason to accept any rational and fair scheme of regulation administered with reason and impartiality.

How, then, arises the doubt in the mind of Interstate Commerce Commissioner Prouty that the scheme of railway regulation adopted in the United States may not be successful?

He says:

"The question is here, Can you obtain under this system (of regulation) the new money which is necessary to develop our old railroad systems and to build our new railroad systems? That is the crucial question."

Upon this point he further says:

"When the Interstate Commerce Commission makes an order, which possibly means \$1,000,000 a year to the carriers affected by it, \$20,000,000 upon a five per cent. basis, in one single bite, you cannot help feeling the load of responsibility which goes with the making of the order \* \* \* It is the duty of the railroad commissioner to most scrupulously protect the railroad, and to mete out to the railroad the most exact justice. It is coming to be apprehended that that is required, not merely as a measure of justice to the railway, but as a measure of right in the interest of the public.

"The railroad is a public servant. That phrase comes to us from the Supreme Court, and has been for a quarter of a century in the mouth of everybody who has to do with this subject. It comes, as time goes on, to take on a different meaning. Originally, the people said, 'The railroad is our servant, therefore we can kick the railroad and cuff the railroad ad libitum.'

"It is coming to be understood, gentlemen, that just as your servant can only properly discharge his duties, when he is suitably fed, suitably clothed, and suitably housed, so the railroad can only properly discharge its duties when it receives proper treatment from the public. It is coming to be apprehended that in the final analysis, the public pays the bill and that it pays for us, as railroad commissioners, to accord to the railroad just and fair treatment. That, I say, is not only demanded by justice—it is demanded by public interest."

It certainly needs no argument to sustain the views thus clearly expressed by one so competent to speak upon this important subject. Mr. Prouty has no bias in favor of railroad interest. He speaks from the standpoint of public interest, and his long and notable record of public service requires us to give serious consideration to his views. He advances no doubtful premises or argument; on the contrary, his statements are obvious and self-evident truths which any fair-minded person must recognize.

No one will question the dependence of this country upon its railways. No other factor has been so important in our national development, and if our country is to advance it must have adequate transportation facilities. Interstate Commerce Commissioner Franklin K. Lane has well said that:

"The railroad is our common highroad; it is not a luxury; it is not a concern in which the farmer and the manufacturer alone are interested; it is an essential to the commercial life of our people, almost as necessary as the land itself, for we have grown up as a people to be physically dependent upon our railroads. No other people are so bound up as are we in economic inter-dependence. No one community in all this land lives to itself. We have grown as railroads were built. We have made a community of a continent."

To the same effect I quote from Theodore Roosevelt:

"The great need of the hour, from the standpoint of the general public—of the producer, consumer and shipper alike—is the need for better transportation facilities, for additional tracks, additional terminals, and improvements in the actual handling of the railroads and all this with the least possible delay. Ample, safe and rapid transporta-

tion facilities are even more necessary than cheap transportation. The prime need is for the investment of money which will provide better terminal facilities, additional tracks, and a greater number of cars and locomotives, while at the same time securing, if possible, better wages and shorter hours for the employees. There must be just and reasonable regulation of rates, but any arbitrary and unthinking movement to cut them down may be equivalent to putting a complete stop to the effort to provide better transportation."

In order to equip our railroads to meet the demands upon them, and to keep pace with the development of the country, large amounts of private capital must be provided. Many hundreds of millions of dollars annually are required for this purpose. During recent years the railroads, because of the difficulty of securing the necessary capital, have not been able to make the extensions and improvements requisite to meet extraordinary conditions which have occurred and may occur again at any time, such as a large agricultural crop throughout the country, or traffic movements required in case of war, etc. As a consequence the railways may be said to have fallen behind the country's progress and necessities.

How far new capital is required for the improvement of our railways has been given careful consideration by the Railroad Securities Commission, appointed by the President under an Act of Congress, which made its report in November, 1911. President Hadley of Yale was chairman of this Commission and his associates were men of high character and ability. The report of this Commission says:

"There is a widespread belief, based on imperfect examination of the evidence, that the amount of capital needed for the future development of our railroad system is small in proportion to that which has been required in the past; that the profits of such added investments of capital are reasonably well assured; and that we can therefore fix attention predominantly, if not exclusively, on the needs of the shipper without interfering with the necessary supply of new money from the investors.

"It is quite possible that the building of additional railroad mileage will be far less rapid in the future than it has been in the past, but the capital needed for the de-

velopment and the improvement of the mileage already existing is enormous, even if we built no new mileage at all. The outstanding stock and debt of the railways in the United States averages less than \$60,000 a mile of line. This figure is bound to be greatly increased in the immediate future. As our population grows denser, we shall need more and more to approximate European standards of construction by the increased amount of double track, the abolition of grade crossings, the development of station facilities both for passengers and for freight, and many other improvements scarcely less fundamental. While our railroads are perhaps even better equipped than those of Europe for the economical handling of large masses of long distance freight, they are far from being adequately provided with appliances to secure the convenience of the the public or the safety of passengers and employees. The cost of all these things is very great. The average capitalization per mile of railroads in Germany is \$109,000, in France \$137,000, in Belgium \$177,000, in Great Britain \$265,000; and, contrary to the commonly received opinion, much of this excess of cost as compared with American roads, is due to other causes than the price of real estate—an item in which our companies have had a great advantage. The cost of European roads has been largely due to improvements which we have not yet made and many of which we must make in the future as population grows denser. The thousands of millions of dollars needed for these purposes must be raised by the sale of securities.”

Now, can the railroads, under present conditions, offer securities upon which the needed funds can be obtained?

Upon this point the Railroad Securities Commission says:

“Neither the rate of return actually received on the par value of American railroad bonds and stocks today, nor the security which can be offered for additional railroad investments in the future will make it easy to raise the needed amount of capital.

“The ratio of interest and dividends to outstanding bonds and stocks of American railroads is not quite four and a half per cent. in each case. The average ratio of dividends to the capital of national banks is between ten and eleven per cent. If it be objected that the value of the



stocks of our railroads is in considerable measure due to the growth of the community rather than to the cash originally invested, and that the bonds and stocks of railroads should therefore be compared with the combined capital and surplus of the national banks, we find that these banks have for the last three years maintained an average ratio of dividends to capital and surplus combined of over six and a half per cent. If we look not at the sums divided, but at the sums earned, we find the same difference of profit in favor of the banks."

And further this report says:

"We hear much about a reasonable return on capital. A reasonable return is one which under honest accounting and responsible management will attract the amount of investors' money needed for the development of our railroad facilities. More than this is an unnecessary public burden. Less than this means a check to railroad construction and to the development of traffic. Where the investment is secure, a reasonable return is a rate which approximates the rate of interest which prevails in other lines of industry. Where the future is uncertain the investor demands, and is justified in demanding, a chance of added profit to compensate for his risk. We cannot secure the immense amount of capital needed unless we make profits and risks commensurate. If rates are going to be reduced whenever dividends exceed current rates of interest, investors will seek other fields where the hazard is less or the opportunity greater. In no event can we expect railroads to be developed merely to pay their owners such a return as they could have obtained by the purchase of investment securities which do not involve the hazards of construction or the risks of operation."

So we have this problem in a nutshell. The railways cannot compete with other industries in obtaining money for their needs unless their earnings approximate the rate of return gained by such industries. If railway earnings are less than this, capital will seek investment in other securities, leaving the railways without funds needed. The securities offered by railroads must, at least, equal in attractiveness those offered by other industries, or capital will avoid railroad investments.

It is a matter of common knowledge that for the last three

or four years it has been very difficult for the railroads to secure upon any reasonable terms the money actually needed by them. I do not ignore the fact that the stringency of the money market affects all other enterprises, including the efforts of states and municipalities to borrow money. But the railways are under special disadvantage in that they cannot raise their rates without the consent of governmental authority, while other corporations and individuals, free from such regulation, may raise their prices and thus secure a return to meet new financial conditions—and State and municipal corporations may, of course, rely upon the practically unrestrained power of taxation to secure necessary funds.

Now if the present tariff rates were certain to be continued, so long as the earnings were necessary to the finances of the railways, it would still be difficult under present conditions for them to secure the money urgently needed for improvements. But the railways cannot deal with this subject upon the assurance that present rates will be continued; on the contrary, rate reductions are being made from time to time by the Interstate Commerce Commission and by State railroad commissions, and applications for increase in rates have generally been unsuccessful, so that the governmental power to fix rates overshadows the situation as a menace which makes it practically impossible at the present time for the railways to secure any longtime loans, or any loans upon reasonable rates of interest.

I assume that present financial conditions are temporary, and that in the near future we may expect the return to normal conditions; it is in view of such normal conditions that we should consider these questions, and if we assume the most favorable financial conditions, the fact still remains that the Interstate Commerce Commission, and the State railroad commissions, with the power vested in them to fix rates, may make it difficult, if not impossible, for the railroads to obtain the money needed. That is to say, if the power of regulation is so exercised as to force reductions, which, if accepted, must result in bankruptcy, the relief which might be given by the courts after tedious and costly litigation would hardly invite the investment of private capital. Even though the capital already invested could be protected against arbitrary reductions, it could not be expected that new capital would be found to run

the risk of further litigation, and, as President Roosevelt has said, an arbitrary rate reduction might put a complete stop to the effort to provide better transportation. So we are forced to the conclusion that it rests with the railroad commissions, state and national, to determine how far, if at all, the railroads of this country shall be extended and improved by means of private capital.

In his address, from which I have already quoted, Mr. Prouty, in referring to the fact that practically all railroad building in Canada was aided by government subsidies, said:

"We may come to that same idea. We may conclude that railroads ought not to be allowed to charge rates which will induce the building of new railroads by private capital. Perhaps that ought to be the conclusion, but what I say now is that upon the manner in which you gentlemen (the Railroad Commissioners of the different States) deal with this subject of railroad regulation, very intimately depends the success with which this experiment is to be worked out, and the future of that question in this country of ours."

The experiment to which Mr. Prouty refers is, as stated in his own language, the building, development, and operation of the railways of this country "by private capital, under rates and regulations fixed, not by the owners of that capital, but by the public."

Now, what are the difficulties, if any, which stand in the way of the success of this "experiment"? First let us define this power of regulation, and mark its boundaries and limitations.

The Supreme Court of the United States has more than once said that this "power of regulation is not the power to destroy." There is nothing inherent in the power of regulation which should make it a destructive force. On the contrary, there is no good reason why it should not secure every public interest without impairing the investments which have produced the railways of the country.

Again, in speaking of this power of regulation, the Supreme Court of the United States recently said:

"It must be remembered that railroads are the private property of their owners; that while, from the public character of the work in which they are engaged, the public has the power to prescribe rules for securing faithful and

efficient service and equality between shippers and communities, yet in no proper sense is the public a general manager."

And the court, in the opinion from which I quote, goes on to define the power or function of regulation to be the enforcement of two leading prohibitions against the railways, viz.: (1) "that their charges shall not be unjust or unreasonable," and (2) "that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced."

Now, certainly, the removal or prevention of unjust or unreasonable rates, and of unjust discrimination, would strengthen rather than weaken the railways, and if the regulative power had been exercised strictly within the definitions of the United States Supreme Court there could be no serious question that the experiment of government regulation would prove successful—that is to say, the railways of this country could be extended, maintained and operated to their highest efficiency by means of private capital, and without financial aid from the government.

Since the era of railway bankruptcies and receiverships in the early nineties, the commercial and business development of the country has largely increased. For example, comparing the years 1892 and 1912 we find that the freight tons carried one mile increased 202.9% and the passengers carried one mile increased 150.8%. Because of reductions in rates this increased volume of business in 1912 produced only 59.9% more revenue than was earned in 1892.

While owing to the increasing volume of traffic many roads are able to show an increase in gross earnings, the increasing expenses of operation almost uniformly reduce the net earnings. For example, between the years 1907 and 1911, the railways of the United States put into their property over two billion dollars new capital, yet they received over eight million dollars less net earnings than were received by them in 1907 before this two billions of new capital was invested.

These striking facts explain the decline of railway credit, and the practical inability of the railways at the present time to secure the new capital needed by them. It is no exaggeration to say that railway financial conditions are critical. Yet, the broad fact remains that the sparsity of traffic which in 1892

contributed to railroad bankruptcies no longer exists. The main lines of road almost without exception now enjoy a volume of traffic sufficient, with reasonable rates, to insure their successful operation, and this, notwithstanding the largely increased expenses of operation.

We may here naturally inquire how far the expenses of operation have been increased through governmental regulation. This includes legislation, state and national, which has contributed many conditions requiring increased expenses, such as laws regulating the hours of service, safety appliances, separation of grades, full crews, headlights, standards of construction, etc. Then the cost of complying with orders of commissions, state and national, as to keeping of records and statistics and furnishing copies of same is considerable. The increase in wages has added very greatly to the cost of operation. Congress, by the enactment of what is called the Newland law, which is a development of the former Erdman act, has provided a method for the arbitration of labor disputes. In order to avoid strikes this law must be invoked and in so far as the officers of the government participate in the proceedings under this law they must share the responsibility for the resulting increase in wages, if any.

Then we have also the increase in taxation, which comparing the years 1892 and 1912, is more than 250%. Throughout the United States the railways pay in taxes 4.21% of their gross earnings. In California we are required to pay  $4\frac{3}{4}\%$ .

All these items of expense should be regarded by the railway commissions, state and national, in their decisions as to the reasonableness of rates, and where, through no fault of the railway, expenses of operation have increased, it is difficult to understand why compensatory increases in rates should not be allowed. If such compensatory increases were permitted, no question would arise as to the adequacy of private capital to meet the problems of railroad operation, maintenance and extension.

By private capital I mean the funds obtained from private investors—which is the source from which all business of the country derives its support. Such funds will naturally seek the investment or security which promises the highest rate of interest without danger of losing the principal. It follows that the credit of the railways can only be maintained by earnings

sufficient to make investments in their securities as attractive as those offered by other business investments.

The rationale of this situation is well stated by the Hon. Franklin K. Lane as follows:

"If our commerce is to grow and trade is to be fluent, if we are to continue as a multitude of interdependent communities and individuals, if we are to give the world the benefit of the great resources of this country, and put to its highest use the genius for industrial development which our people manifest, our existing lines of railroad must be made profitable to their owners, and money must find that investment in railroads is both attractive and secure. A regulating body which is not fair to those who have invested their money in a public utility does infinite damage to the community that it is attempting to serve. To be just to the stockholders, however, does not mean that injustice must be done the public. The traffic manager may not ask all that the traffic will bear without doing his railroad in the end a great wrong, nor can the shipper hope to have lasting benefit from any injustice done to those who have put their money at the public service."

Obviously, the experiment of government regulation must prove a failure if it forces down the net income of the railways to such an extent that new capital needed for extensions and improvements cannot be secured. This may be done not only by reducing rates but by imposing conditions which largely increase the expense of operation.

After all unjust discriminations are removed, and the rates are such as do not obstruct the movement of traffic, the first interest of the public is that railway earnings shall be sufficient to give the railways first-class credit in the money markets of the world, for it is only by such credit that adequate transportation facilities, by means of private capital, can be secured.

It is far better for the business of the country that railway earnings should be sufficient to maintain such credit than that any mere reductions in rates should be made which might impair that credit. Concretely stated, it is more important to the public interest that the money necessary to furnish adequate transportation facilities should be expended by the railways for that purpose than that tariff reductions should be made to the extent of the interest rate upon that money.

The first consideration of the rate-regulating power should be to secure the most efficient transportation facilities for the public, and obviously it should avoid any policy or action tending to cripple the railways or lessen their ability to perform their public service.

When all unjust discriminations are abolished and resulting rates are such that all traffic freely moves between points of production and market destination, such rates are certainly not unreasonable to the public, even though they produce large railway earnings, and if such earnings are actually required as a basis for obtaining the new capital needed for extensions and betterments, why should they not be allowed? Why should there be an effort on the part of the governmental authorities to force these rates down to, or nearly to, the point where the courts would enjoin the reduction because confiscatory? The shipper has no real complaint if he is on an equality with all other shippers and his merchandise readily moves at the higher rate which insures him the most efficient transportation facilities. To bring the rate down nearly to the point of confiscation, and thus prevent the needed extensions and improvements in transportation service required by the shipper, is an actual detriment to the shipper and therefore to the public.

What I have said may not be dismissed as a partisan argument advanced by a railroad official for I am fully sustained by what was said by Judge Prouty in a recent public address and I take the liberty of further quoting from him as follows:

"The two original purposes \* \* \* of this (Inter-state Commerce) act were, first, to prevent discrimination; second, to make rates reasonable. \* \* \*

"I think those two purposes of the act to regulate commerce have been in the main accomplished \* \* \*

"What I may term the danger point in the railroad situation has very radically changed in the last twenty-five years. Twenty-five years ago the danger point was the discrimination. Twenty-five years ago the danger point was the unreasonable rate. Today, in my opinion, neither of those are danger points. The danger point today, I think, is the inadequate service, and the inadequate facility.

"Now I am speaking to business men. I believe you will agree with me that the service and the facility are of more importance to you than any slight difference in

rate. You want your cars. You want reasonable expedition. You want everything which goes with an efficient service, and that you must have \* \* \*

"I think that today it is just as much the duty of the commission to see that the railroads are given reasonable rates which will yield to them a fair return, as it is to see that no unreasonable rate is charged to the shipper, and I believe this is in the highest interest of the shipper himself \* \* \* .

"When you reduce the rates of the railroads of this country to a point where they no longer yield a profit, you have destroyed the value of their property, you have annihilated their credit, and you have made it absolutely impossible for the railroads to provide the service which you must have.

"I ought, as a member of the Interstate Commerce Commission, in passing upon the reasonableness of a rate, to bear in mind the fact that that property has been dedicated to the public use upon the theory that it is to enjoy a fair return. But if I were to lay out of view entirely the interest of the railroad, if I were to consider your interest, and your interest alone, it would still be my duty, and my highest duty to you, to allow the railroad a sufficient rate so that it might from that rate obtain the needed revenue with which to develop, with which to maintain its credit, with which to give you the service which you must have, and which you cannot otherwise enjoy \* \* \*

"In the past, as a rule, the orders of the Commission have been in reduction of rates rather than in permitting their advance \* \* \* . But this is a time of change, and no man can forecast the future. The cost of living is advancing. The cost of almost everything which a railroad buys is increasing. Wages which they must pay are increasing \* \* \* So I say to you, gentlemen, that no man can foretell whether in the years to come it will be, or will not be, necessary to allow some increase in the transportation charges of our railroads. What I desire you to remember is this: That if that time comes, it will be the duty of the commission to permit that advance. That would not only be an act of justice, which you, as believers



in the square deal would approve, but would also conserve in the highest degree your interest as shippers."

In what Judge Prouty has thus said I believe he represents the spirit and thought which actuates his colleagues as well as the railroad commissions of the different states in the discharge of their official duties, and from this I argue that the railroads need not fear injustice which at the same time would cause a greater injustice to the best interests of the whole country.

We cannot doubt that when these considerations are generally understood, as they are coming to be and will be, the public interest in these matters will receive protection at the hands of the railway commissions of the country. I do not think it possible that the railway commissions will deliberately or purposely embarrass the railways to prevent them from obtaining the private capital required for their needs; in other words, to make the experiment of government regulation a failure in order to bring about government ownership of the railways. I do not believe that government regulation will be made a failure because of the deliberate purpose of railway commissions to make it so. All that is needed is a thorough understanding of the situation, not only by the railway commissions but by the railway officials themselves, and it is the clear duty of the latter to aid in every reasonable way the railway commissions in their work. As I have said, the railway officials have good reason to accept this regulative function on the part of the government, but this function involves many difficult and complex questions which can only be solved rightly and for the best interests of all by the thorough co-operation of railway officials with the railway commissions.

The office of a railroad commissioner is one of high responsibility. I believe no other office in our government is more important. It requires great ability and no one can be well qualified for this position without training and experience and such independence of character as makes the official indifferent to mere political preferment. The tenure of office and salary paid should be such that there would be no difficulty in obtaining for these places the best qualified men in the country. The work thus far done by the railway commissions, state and federal, while largely preliminary or formative, gives earnest of the permanent value of this governmental function. The public is coming to recognize its importance and no doubt

will insist upon any changes either in the law or in its administration which are necessary to make the experiment of public regulation a success rather than a failure.

I have aimed briefly to point out the importance, not only to the railways but to the public, of government regulation of railways. I have shown, I think, that without such regulation neither the public interest nor that of the railways was fully protected. Some measure of regulation was therefore necessary. It may be that the regulation which has ensued has gone beyond the best and wisest limits, but I do not think it material to raise that question, for, after all, a wise and enlightened administration of the present laws upon this subject will, I am satisfied, be successful; whereas, the best laws possible would result in failure if unwisely, ignorantly or viciously administered. So the administration of our present laws is the all important thing, and that, of course, largely depends upon the men who constitute the Interstate Commission and the railroad commissions of the different states. There are possible conflicts between the national and state authorities which may only be solved by additional legislation but in good time that will be provided, if necessary. And while the leading responsibility for success or failure of government regulation must rest upon the railway commission, I have frankly stated that the railway officials cannot escape a large responsibility, and their duty is plain to co-operate with and aid the government officials in every reasonable way. Where the officers of the government go beyond the limits of constitutional power, and such acts affect the vital interests of the railways, there is no recourse other than an appeal to the courts of the country. But I hope the period of litigating questions of constitutional law upon this subject has largely passed and that the effort of all officials and parties interested will henceforth be loyally devoted to solving the question at hand in the best interest of the public, for, if that is done, I am certain that the railway interests will be fully protected.

WILLIAM F. HERRIN.

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